

ARTICLE XXV - ZONING BOARD OF APPEALS [amended 11/00]

SECTION 2500: PURPOSE AND INTENT

The purpose of this Article is to insure that the objectives of this Ordinance are fully and equitably achieved, that a means be provided for competent interpretation of this Ordinance, that flexibility be provided for in the strict application of this Ordinance, that the spirit of the Ordinance be observed, public safety secured and substantial justice done.

SECTION 2501: CREATION AND MEMBERSHIP

There is hereby established a Zoning Board of Appeals (ZBA), which shall perform its duties and exercise its powers as provided in Section 5 of Act 207 of the Public Acts of 1921, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done. The ZBA shall consist of seven (7) members appointed by the City Commission, and shall include one (1) member of the City Commission and one (1) member of the Planning Commission. Every member shall be a legal resident of the City. The term of the representative of the City Planning Commission and the term of the City Commission representative shall expire with that of his/her Planning Commission or City Commission office. The terms of all members except the representative of the City Planning Commission and the City Commission shall be for periods of three (3) years each. The ZBA shall annually elect its own Chairman and Vice-Chairman.

The presence of four (4) members shall constitute a quorum. The ZBA shall act by resolution. The concurring vote of four (4) members of the ZBA shall be necessary to reverse any order requirement, decision, or determination of the Zoning Administrator or body, or to decide in favor of the applicant a matter upon which they are required to pass under an ordinance, or to effect a variation in an ordinance.

The ZBA may call on any other City department for assistance in the performing of its duties, and it shall be the duty of any such department to render such assistance to the ZBA as may reasonably be required.

The City Commission may remove a member of the ZBA for non-performance of duty or misconduct in office. Misconduct shall include but not be limited to failure of members to disqualify themselves from a vote in which that member has a conflict of interest.

SECTION 2502: POWERS AND DUTIES

1. Interpretation

The ZBA shall interpret the zoning text or map upon application. Where the street or lot layout actually existing, or as recorded, differs from the street and lot lines as shown on the zoning map, the ZBA after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purpose of this chapter for the particular section or district in question. In case of any question as to the location of any boundary line between zoning districts, a request for interpretation of

the zoning map may be made to the ZBA and a determination shall be made by the ZBA, solely for the purpose of applying or enforcing the zoning ordinance.

2. Appeals

The ZBA shall have the power to hear and decide appeals, filed as provided in the following section, where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the Zoning Administrator or other administrative official in the carrying out or enforcement of the provisions of this chapter.

In exercising its powers, the ZBA, in conformity with the provisions of this chapter and of Act 207 of the Public Acts of 1921 (MSA SS 5.2931 et seq.), as amended, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as in its judgment ought to be made.

3. Nonuse or Dimensional Variances

The ZBA shall have the power to authorize upon appeal in specific cases, filed as required by this article, such nonuse or dimensional variances from the provisions or requirements of this chapter as will not be contrary to the public interest; but only in such cases where, owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of the chapter would cause practical difficulty.

Where, by reason of the exceptional narrowness, shallowness or shape of a specific piece of property on the effective date of the ordinance from which this chapter is derived, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of this chapter would involve practical difficulties, unnecessary to carry out the spirit and purpose of this chapter, the ZBA shall have the power to authorize a variance from such strict application, so as to relieve such difficulty and so that the spirit and purpose of this chapter be observed and substantial justice done. In authorizing a dimensional variance, the ZBA may attach thereto such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of this chapter and in the public interest.

No such dimensional variance in the provisions of requirements of this chapter shall be authorized by the ZBA unless the ZBA finds, beyond reasonable doubt, that all the following facts and conditions exist:

- a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district.

- b. That such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity.
- c. That the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest.
- d. That the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner.
- e. That the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.
- f. That the requested variance is the minimum action required to eliminate the difficulty.

The nature of dimensional variance applications requires detailed information on the property that is not required or desired in interpretation or appeal applications. The following data shall accompany all applications for a nonuse or dimensional variance:

- a. A plot plan showing the property layout, the alleged difficulty, and the minimum relief suggested for the difficulty.

4. Use Variances

The ZBA shall have the power to authorize upon appeal in specific cases, filed as required by this article, such use variances from the provisions or requirements of this chapter as will not be contrary to the public interest; but only in such cases where, owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of the chapter would cause unnecessary hardship.

The purpose and intent of this Ordinance is that every landowner in the City of Muskegon should enjoy a beneficial use of their property. A use variance is a process by which the City evaluates the allegation that there is no beneficial use, and can provide relief from the regulations by granting additional development potential to provide a beneficial use of the property. It is also the intent of this Section that such relief not increase the potential for damaging the health, safety, or welfare of future users of the property or neighbors that might reasonably anticipated if the landowner were permitted to engage in or construct the use proposed. Under no conditions shall a use variance be granted unless there is a finding of no beneficial use.

No such use variance in the provisions or requirements of this chapter shall be authorized by the ZBA unless the ZBA finds that all the following facts and conditions exist:

- a. That the property could not be used (put to a reasonable use) for the purposes permitted in that zone district.

- b. That the plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
- c. That the proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest.
- d. That the alleged hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner.
- e. That the alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.
- f. That the requested variance is the minimum action required to eliminate the hardship.
- g. That the use variance does not permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested.
- h. The extent to which the ordinance protect users or neighbors from threats to health, safety and welfare shall be considered. A use that seriously threatens the health of future residents or neighbors is not a beneficial or allowable use.
- i. In no case shall a use that is a nuisance per se, or a use which in that particular location constitutes a nuisance, be granted as a use variance. Such uses are not legal uses of the land.

The following data shall accompany all applications for a use variance:

- a. A site plan must be submitted which meets the requirements of this ordinance.

Every use variance approved by the ZBA shall require a time for completion of improvements.

SECTION 2503: APPEALS, APPLICATIONS, FILING PROCEDURE AND FEES [amended 3/97]

An application or appeal to the ZBA in cases in which it has original jurisdiction under the provisions of this ordinance or state law, may be taken by any property owner or tenant, or by a governmental office, department, board or bureau affected.

Such application or appeal shall be filed with the Zoning Administrator, who shall transmit the same, together with all the plans, specifications and other papers pertaining to the application, to the ZBA.

Such application or appeal shall specify the grounds for appeal, or reason for application, and be accompanied by a filing fee in the amount specified in the City's Master Fee Schedule as adopted by a resolution of the City Commission and in effect at the time of application.

In the absence of a ZBA rule to the contrary, an appeal or application for interpretation to the ZBA shall be taken by delivery to the Zoning Administrator on or before thirty (30) days after the Zoning Administrator's written decision has been delivered to the applicant. All applications for appeals or interpretations shall specify the grounds for appeal or reason for interpretation.

The ZBA shall decide all applications and appeals within thirty (30) days after completion of the hearing thereon, and such decision shall become effective upon certification of the resolution of the ZBA.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the ZBA after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may, on due cause shown, be granted by the ZBA or by the circuit court on application, after notice to the Zoning Administrator. The decision of the ZBA on an appeal shall be final. However, a person having an interest may appeal to the circuit court.

No application for a variance which has been denied, wholly or partly, by the ZBA shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Zoning Administrator to be valid.

SECTION 2504: HEARINGS, NOTICES, ADJOURNMENTS

1. When an application or appeal has been filed in proper form and with the required date, the Zoning Administrator shall immediately place said application or appeal upon the calendar for hearing and cause notices, stating the time, place, and purposes of the hearing being served. Such notices shall be served personally or by mail at least ten (10) days (excluding Saturdays, Sundays, and holidays) prior to the day of such hearing, upon the applicant or appellant, the Building Inspector, the owners of property and the occupants of single and two-family dwellings within three hundred (300) feet of the property in question. If the tenant's name is not known, the notice may be addressed to the occupant.

Any party may appear at such hearings in person or be represented by agents, attorneys, or both.

2. Upon the day for hearing any application or appeal, the ZBA may adjourn the hearing in order to permit the obtaining of additional information, or to cause such further notice as it deems proper to be served upon such other property owners as it decides may logically be concerned with said application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time and resumption of said hearing unless the ZBA so decides.
3. Hearing Procedure; Record; Due Process: The ZBA shall cause a complete record to be made at the hearing, including, without limitation, video or audio recordings, exhibits, documents, letters, photos, or computer records, as appropriate, and preserve same as the record of the hearing. Anyone applying for a variance shall have the right to counsel, cross-examination and all other rights comporting with procedural due process. The

applicant may be required to deposit sufficient funds to pay for recording, preservation, transcription and duplication of the record, as a condition of proceeding.

4. All decisions of the ZBA shall be in writing and demonstrate the basis for the decision from the record of the hearing.

SECTION 2505: TERMINATION OF VARIANCE

No order of the ZBA permitting or approving the installation of any improvement shall be valid for a period longer than one (1) year, unless a Building Permit for such improvement is obtained within thirty (30) days of the ZBA action, and such improvement is started and proceeds to substantial completion in accordance with the terms and time limits set forth in the variance decision.